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# Supreme Court of the United States

October Term, 1943

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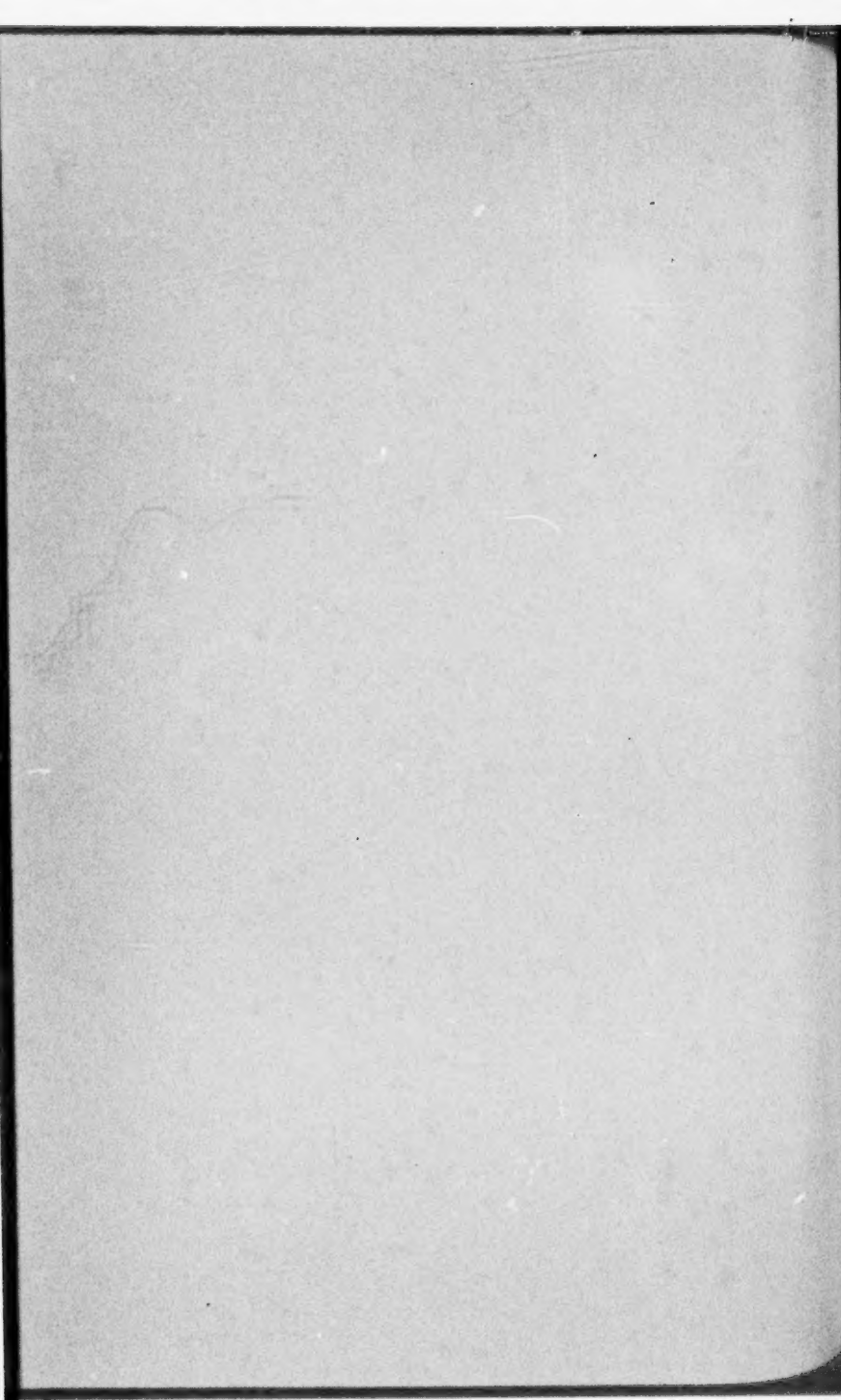
HARRY SITAMORE,  
PETITIONER,

vs.

THE STATE OF FLORIDA, NATHAN MAYO, as State  
Prison Custodian, and L. F. CHAPMAN, as  
Superintendent of the State Prison at  
Raiford, Florida.  
RESPONDENTS.

PETITION FOR WRIT OF CERTORARI<sup>I</sup>

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JOHN G. GRAHAM,  
of Tampa, Florida.  
*Attorneys for Petitioner.*



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## PETITION FOR WRIT OF CERTIORARI

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TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, Harry Sitamore, respectfully prays for a writ of *certiorari* herein to review a final decision of the Supreme Court of the State of Florida, the highest court of said State, affirming the decision of a Circuit Judge in said State in a *habeas corpus* proceeding and denying the petitioner the right to a writ of error *coram nobis* in the above entitled cause. The opinion and decisions of said Supreme Court was rendered and filed under date of February 1st, 1944 clarified in a subsequent opinion on the 15th day of February, 1944 and a rehearing denied on the 23rd day of February, 1944. Said court, in effect, has held that a violation of the petitioner's rights under the 5th, 6th and 14th amendments to the Federal Constitution, can not be reviewed in *habeas corpus* proceedings, while at the same time

denied him, the petitioner, a writ of error *coram nobis* to review the invalidity of his imprisonment on evidence dehors the record.

### SUMMARY OF MATTER INVOLVED

The petitioner, Harry Sitamore, was arrested without a warrant by police officers of Miami Beach, Florida, on the 16th day of March, 1933. He was not taken before a Magistrate nor arraigned in the Criminal Court of Record of Dade County, Florida until March 24, 1933 when he entered a plea of not guilty. On April 1, 1933, still acting in his own proper person, he withdrew his plea of not guilty and entered a plea of guilty and was sentenced to concurrent terms of twenty (20) years on each of two informations. He is now serving these sentences. On each of two additional informations, he received two concurrent sentences of twenty (20) years to begin at the expiration of the first sentence, a total of forty (40) years.

On April 2, 1943 the petitioner presented his petition to the Supreme Court of the State of Florida, the highest court of said State, representing among other things that he was arrested on the 16th day of March by police officers acting without a warrant, confined in jail where for eight days he was subjected to a continuous examinations by police officers and private detectives, acting in relays, before being taken before a Magistrate. That he was denied the advice of counsel and finally after eight more days of such questioning, he was assured by said police officers and the prosecuting attorney that if he would withdraw his plea of not guilty and enter a plea of guilty to the informations and cause the return of the jewelry he would receive a sentence of not less than two and not more than five years

as and for grand larceny, and was assured that the Judge of the Criminal Court of Record, E. C. Collins, had agreed to impose such sentence in case he acceded to their wishes. That not being versed in the law, nor having the benefit of counsel, and not understanding that the informations filed against him were framed on the theory that he had committed the crime of breaking and entering with intent to commit a felony, a more serious offense, he did enter his plea of guilty on the two separate informations in question on the 1st day of April, and, in violation of the promise under which the plea was made, was sentenced to imprisonment by the court to an aggregate of forty years on said informations.

On the filing of said petition a writ of *habeas corpus* was issued by the Honorable Rivers Buford, Chief Justice of said Supreme Court, returnable before the Hon. Paul D. Barns, Circuit Judge of Dade County, Florida, which said Judge, after the taking of the testimony, entered a decree holding that, though the prisoner was led to believe that he would be dealt with more considerately than he was, yet the adjudication of guilty and the sentence were not impeachable by *habeas corpus* and that whether his judgment and sentence should be reviewed was dependent on the trial court and the Supreme Court in proceedings other than *habeas corpus*, "If any are available". The prisoner was remanded into the custody of the respondents.

An appeal was taken from the decision of the Circuit Judge to the Supreme Court of the State of Florida assigning as error, among others, the following:

1. The Court erred in finding that the adjudication of guilty entered by the Judge of the Criminal Court of

Record of Dade County, Florida, was not impeachable by *habeas corpus*.

2. That the Court erred in holding that the sentence imposed upon the petitioner by the Judge of the Criminal Court of Record of Dade County, Florida, was not impeachable by *habeas corpus*.

3. The Court erred in failing to hold under the evidence that the petitioner was coerced into pleading guilty to the information filed in the Criminal Court of Record, Dade County, by long and protracted questioning; that he was deprived of the benefit of counsel, and that his plea of guilty was not voluntary, and that it was made under circumstances which rendered the adjudication and sentence void.

4. That the Court erred in refusing to hold that the plea of guilty and the sentence pronounced against the petitioner was in violation of the 14th Amendment to the Federal Constitution as well as of Sections 4 and 11 of the Declarations of Rights of the Constitution of the State of Florida, and was therefore null and void.

Thereafter the Supreme Court of the State of Florida affirmed the decision of the Lower Court, without opinion, on the 1st day of February, 1944.

On the 7th day of February, 1944 petitioner filed a petition requesting that the decision be clarified in that it was not clear whether the decree of the court was based on the merits or was based on the inapplicability of *habeas corpus* proceedings, or whether appellant's remedy was a writ of *coram nobis*, in which event petitioner requested the court for permission to apply to the Criminal Court of Dade County, Florida, for a writ

of *coram nobis*, notwithstanding the fact that said application must of necessity be made upon facts known to the trial court.

On the 15th day of February, 1944 the Supreme Court of the State of Florida, entered its decree clarifying its opinion and refused the issuance of a writ of *coram nobis*.

Motion for a rehearing having been filed and entertained by the said Supreme Court a rehearing was denied on February 23, A. D. 1944.

### **BASIS OF JURISDICTION**

It is contended by petitioner that this court has jurisdiction by reason of the provisions of the 5th, 6th and 14th Amendments to the Constitution of the United States which sections, insofar as they affect the present question, inhibit the deprivation of life, liberty or property without due process of law; secure to the accused the right to have the assistance of counsel for his defense, and whereby the several states are prohibited from depriving any person of his life, liberty or property without due process of law, and from denying to any person within its jurisdiction the equal protection of the laws.

That the jurisdiction of this court in the instant case is derived from Section 237 of the Judicial Code as amended (Title 28, U.S.C.A., Section 344).

That the date of final adjudication of the questions here involved is February 23, 1944 on which date the motion for a rehearing was considered and denied, and that this petition for issuance of writ of *certiorari* is filed within ninety days from said date. <sup>7</sup>

## QUESTIONS PRESENTED

### I.

Where in the arrest, prosecution and sentencing of a man his rights under the 5th, 6th and 14th Amendments to the Constitution of the United States have been violated by the officials and court sentencing him to a term of years in the State Prison of the State of Florida, may the Supreme Court of said State deny to such a person the right to a review of such sentence on the theory that the same cannot be reviewed under the known forms of procedure in said State?

### II.

Where on a petition for writ of *habeas corpus* filed with the Supreme Court of the State of Florida the facts alleged show a violation of the petitioner's rights under the 5th, 6th and 14th Amendments to the Constitution of the United States and the Judge before whom the writ of *habeas corpus* was made returnable refused to consider facts dehors the record on the theory that such could not be done under the recognized procedure in said State, should the Supreme Court of said State, on affirming the said ruling, have granted the motion of petitioner for a writ of error *coram nobis* on such fact?

## REASONS RELIED ON FOR THE ALLOWANCE OF WRIT.

It is contended by petitioner that the result of the proceedings above recited has been to deprive a person of the right of review of the denial of his constitutional rights under the Federal Constitution and that the result of the decisions and rulings of the Supreme Court



of the State of Florida are at variance with the decisions of this court on substantially the same questions here presented.

Respectfully submitted,

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MARTIN CARABALLO,

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JOHN G. GRAHAM,  
*Of Counsel for Petitioner.*